

Town of Camp Verde

15-110

Consultant Agreement

For Professional Services

For

Engineering and Design Services: Master Plan for the Finnie Flat Corridor from SR-260 to the Tri-Intersection of Finnie Flat, Main St. and Montezuma Castle Highway

Between the

Town of Camp Verde

Camp Verde, Arizona

And

XXXXXXXXXXXXXX

This INDEPENDENT CONSULTANT AGREEMENT ("Agreement") is by and between **XXX Name**, with a business address of **Insert address/city/state/zip**, a Professional Engineer ("Consultant") and the Town of Camp Verde, a municipal corporation ("Town") with a business address of 473 S. Main Street, Camp Verde, AZ 86322 and is awarded pursuant to Project . # **15-110**

This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Consultant will be an independent Consultant and not an employee of the Town for all purposes, including, but not limited to, the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code (and any other Arizona income tax laws), the State of Arizona workers' compensation laws and unemployment insurance laws and any of the Town's benefit plans for the Town's employees. Consultant agrees that it is a separate and independent enterprise from the Town, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform any work performed for the Town. This Agreement shall not be construed as creating any joint employment relationship between Consultant and the Town. The Town will not be liable for any obligation incurred by the Consultant, including, but not limited to, unpaid minimum wages and/or overtime premiums. This Agreement shall not be construed to authorize the Consultant to act as an agent for the TOWN in any manner.

The parties further agree and acknowledge that the Town is engaging Consultant as an independent Consultant to provide services to the Town under the terms of this Agreement and that the Town shall not be required, under any circumstance(s), to assume liability for the direct payment of any salary, wage, or other compensation to any person employed by the Consultant before, during, or after this agreement is in effect.

The Town shall not withhold from sums becoming payable to the Consultant under this Agreement any amounts for federal, state or local taxes, including federal or state income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. The Town shall report all payments to Consultant on Internal Revenue Service Form

1099. The Consultant agrees that any tax obligation of Consultant arising from the payments made under this Agreement will be the Consultant's sole responsibility. The Consultant will indemnify the Town for any tax liability, interest, and/or penalties imposed upon the Town by any taxing authority based upon the Town's failure to withhold any amount from the payments for tax purposes.

In performance of services hereunder, CONSULTANT shall determine his/her necessary hours of work. CONSULTANT shall provide whatever employees, tools, equipment, vehicles, and supplies CONSULTANT may determine to be necessary in performance of services hereunder.

Section I. Period of Service

The term of this Agreement shall be for the period commencing on **INSERT DATE** with the Town Council approval of this Agreement and shall continue for **INSERT LENGTH OF CONTRACT IN MONTHS** until **INSERT DATE** unless terminated sooner by the parties, pursuant to Section IV below.

Section II. Compensation

Consultant shall provide a **Master Streetscape Plan for the Finnie Flat Corridor**. The Town and Consultant shall mutually agree upon the specific work product, scope of services and cost of any work performed.

The rates Consultant will be paid as consideration for performance of **Engineering and Design** on a monthly basis through a flat fee system. CONSULTANT shall be paid **\$XXX** in professional fees and costs. No further payment will be made for routine facsimile, telephone, postage, copy, or travel costs. Extraordinary costs shall be submitted for prior approval and reimbursement to CONSULTANT through the Public Works Director for **Possible approval by the Town Council if INSERT DESCRIPTION OF WHAT CONSTITUTES EXTRAORDINARY COSTS**. If approval of such work is granted, the TOWN will compensate CONSULTANT at **INSERT AMOUNT TO BE PAID** for each **INSERT EXTRAORDINARY COST DESCRIPTION**.

Section III. Billing

Consultant shall provide Consultant services to the Town, based on the written needs of the Town as outlined in Exhibit "A"; **ADD EXHIBIT "A" FOR SCOPE OF WORK**. The Town shall pay Consultant, monthly, based upon work performed, completion to date and submission of invoices pursuant to Section II. Invoices should be mailed to the following address:

Town of Camp Verde
Public Works Department
395 S. Main Street
Camp Verde, AZ 86322

Section IV. Termination

The Town or the Consultant reserves the right to cancel the whole or part of this Agreement with or without cause and for any reason or no reason by giving **60 days** written notice to either party.

However, in the event that this Agreement is terminated the Town shall pay Consultant in full for all services already rendered pursuant to Section II, exclusive of any markup for profit or expected compensation following such termination, and all future obligations under this Agreement shall cease. This Agreement is subject to termination pursuant to A.R.S. § 38-511.

Section V. Successors and Assigns

Neither this Agreement, nor any obligation of Consultant hereunder, shall be assigned in whole or in part by Consultant without the prior written consent of the Town Manager.

Section VI. Waiver and Severability

A waiver of any part of this Agreement, whether express or by conduct, shall not constitute a continuing waiver of such part (unless explicitly stated to be so), or a waiver of any other part, nor shall a waiver of any breach of this Agreement, or any part of it, whether express or by conduct, constitute a waiver of any succeeding breach. The provisions of this Agreement shall be severable such that if any provision shall be deemed to be invalid and unenforceable for any reason, such invalidity or unenforceability shall not affect the remaining provisions hereof.

Section VII. Whole Agreement

This Agreement, represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

Section VIII. Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

Section IX. Insurance Requirements

The Contractor/Consultant agrees to procure and maintain at Contractor/Consultant's sole expense and to provide a Certificate of Insurance/Endorsement evidencing insurance coverages below.

1. **COMPREHENSIVE COMMERCIAL GENERAL LIABILITY**

Combined single limit against claims for Bodily Injury, Death and Property Damage, in connection with services provided and in an amount not less than:

\$1,000,000 each occurrence
\$2,000,000 aggregate

General Liability Insurance certificates *shall name the Town of Camp Verde as an Additional Insured (with corresponding endorsement relative to the additionally insured status)* and provide a description of operations: Example: For Bid #: XYZ123

2. **COMPREHENSIVE COMMERCIAL AUTOMOBILE LIABILITY**

Combined single limit for Bodily Injury and Property Damage, in an amount not less than:

\$1,000,000

Auto Liability Insurance policies or certificates *shall name the Town of Camp Verde as an Additional Insured (with corresponding endorsement relative to the additionally insured status)*.

Required if the Contractor/Consultant is driving for the town beyond the normal commute to the job site.

Including:

1. Non-Owned
2. Leased
3. Hired Vehicles

3. **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY**

Statutory Minimum \$1,000,000

Plus Employer's Liability Coverage for:

A:	Each Accident	\$1,000,000
B:	Each Employee	\$1,000,000
C:	Disease, Each	\$1,000,000

Exception: sign a waiver provided by the Town relative to being a sole proprietorship without any employees.

All carriers shall be approved to write insurance in the State of Arizona and possess an A- or better A.M. Best rating.

- With the execution of this Agreement, Consultant shall simultaneously furnish any original Certificates of Insurance and corresponding endorsement(s) evidencing the required coverage to be in force on the date of this Agreement.

- Consultant shall furnish to the Town of Camp Verde any renewal Certificates of Insurance (if coverage has an expiration or renewal dates occurring during the term of this Agreement).
- The Consultant shall keep said policies in force for the duration of the Agreement and for any possible extension thereof. The policy shall not be suspended, voided canceled or reduced in coverage for the duration of the Agreement and for any possible extension thereof without at least thirty (30) days' notice of cancellation of material change in coverage. Such notice shall be sent directly to Town of Camp Verde, 473 S. Main Street, Ste. 102, Camp Verde, AZ 86322, Attn: Risk Manager.
- The receipt of any Certificate of Insurance and endorsement does not constitute an agreement by the Town of Camp Verde that insurance requirements have been met.
- Failure of Consultant to obtain Certificates or other insurance evidence from other Consultants shall not be deemed a waiver by the Town of Camp Verde.
- The Consultant's liability under this Agreement is not in any way limited by the insurance required by this Agreement.

Failure to comply with insurance requirements may be regarded as a breach of the Agreement terms.

Section X. Indemnity

Consultant agrees, to the fullest extent permitted by law, to indemnify, defend, save and hold harmless the Town of Camp Verde, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Consultant agrees to waive all rights of subrogation against the Town of Camp Verde, its officers, officials, agents and employees for losses arising from the work performed by the Consultant for the Town of Camp Verde.

Section XI. Compliance with Federal and State Laws

The Consultant understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the provisions of A.R.S. §41-4401, Consultant hereby warrants to the Town that the Consultant and each of its SubConsultants ("SubConsultants") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Consultant Immigration Warranty").

A breach of the Consultant Immigration Warranty shall constitute a material breach of the Agreement and shall subject the Consultant to penalties up to and including terminations of this Agreement at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Consultant or SubConsultant's employee who works on this Agreement to ensure that the Consultant or any SubConsultant is complying with the Consultant Immigration Warranty. Consultant agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Consultant and any of the SubConsultants to ensure compliance with Consultant's Immigration Warranty. Consultant agrees to assist the Town in regard to any random verification performed.

Neither the Consultant nor any of the SubConsultants shall be deemed to have materially breached the Consultant Immigration Warranty if the Consultant or SubConsultant establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

This Agreement is subject to termination pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals, this **INSERT MONTH/DATE/YEAR**.

APPROVED AS TO FORM:

Town of Camp Verde:

Town Attorney/Date

By: _____
Mayor/Date

Consultant:

By: _____

Date: _____

ATTEST:

The Mayor and Council approved this agreement for execution at the regular session of
INSERT MEETING DATE.

Town Clerk

The contract was reviewed and delivered, as signed by the Town, to the Consultant on by _____
